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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 1074

WINDING GULF COLLIERIES, *Petitioner,*

vs.

THE BOARD OF EDUCATION OF THE COUNTY OF RALEIGH, WEST VIRGINIA, and ALLEMANNIA FIRE INSURANCE COMPANY, *Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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WINDING GULF COLLIERIES, *Petitioner,*

vs.

THE BOARD OF EDUCATION OF THE COUNTY OF RALEIGH, WEST VIRGINIA, and ALLEMANNIA FIRE INSURANCE COMPANY, *Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

To The Honorable, The Chief Justice And The Associate Justices of The Supreme Court of The United States:

The petitioner, Winding Gulf Collieries, a corporation, prays that a writ of certiorari issue to review the decree or judgment of the United States Circuit Court of Appeals for the Fourth Circuit, reversing the decree or judgment of the District Court of the United States for the Southern District of West Virginia, entered in the case then therein pending upon a bill of interpleader instituted by Allemannia Fire Insurance Company against The Board of Education of the County of Raleigh, West Virginia, and your

petitioner, which said decree or judgment of said District Court awarded and sustained the claim of your petitioner to certain funds payable under numerous insurance policies issued by a number of insurance companies.

OPINIONS BELOW.

The original opinion of the District Court (R. 80) is reported in 60 F. Sup. 68, sustaining the claim of the petitioner to the funds in controversy, for a proper distribution of which petitioner and respondent, The Board of Education of the County of Raleigh, West Virginia, were convened on bill of interpleader by Allemannia Fire Insurance Company. The finding of fact is fully stated in the record. (R. 92.) The conclusions of law were made by the trial court. (R. 96.) The decision of the Circuit Court of Appeals, reversing the District Court, is reported in 152 F. (2d) 382. (R. 137.)

JURISDICTION.

The original opinion of the Circuit Court of Appeals was made and its judgment was entered on the 12th day of December, 1945. Petition for rehearing was filed on the 10th day of January, 1946. The final order, denying rehearing, was entered on the 5th day of February, 1946. (R. 165.) The order staying the mandate for sixty days was entered on the 8th day of February, 1946. (R. 165.) The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, (28 U. S. C. A., Section 347).

QUESTIONS PRESENTED.

The questions presented in this case are:

1. Whether the Circuit Court of Appeals properly con-

strued the fire insurance policy contracted and issued in and under the laws of the State of West Virginia.

(a) The Statute of West Virginia prescribes a uniform policy of fire insurance to be issued by fire insurance companies, doing business in West Virginia, and expressly prohibits the issuance of any policy of fire insurance in any other form (see statute in Appendix to Brief with this petition), and the form of policy thus prescribed has and bears a provision rendering the policy absolutely void unless the ownership or the interest of the insured is sole and unconditional and in case of a building the insured be the unconditional owner of the land on which the building is built, in fee simple, unless an agreement in writing be attached to such policy, prescribing *"the extent of the application of insurance under the policy."* (See statute in Appendix.)

(b) The building insured in the instant case was on ground not owned by the named insured in fee simple, and the interest of the named insured was other than unconditional and sole ownership. To prevent the policy, under such circumstances, from being utterly void under the statute, there was printed in the space indicated by the statute and added to the policy at such space, as provided by the statute, an agreement in writing, by apt and appropriate words, *extending the insurance to all persons* having interest in the property.

(c) The words used were: "Assured The Board of Education of the County of Raleigh as is now or may hereafter be constituted *for account of whom it may concern,*" (Emphasis our own) which language has a well-defined meaning, force and effect, and comprehends and indemnifies all persons having any interest in the subject of in-

surance, as construed and determined by this Court in *Hagan* v. *Scottish Union & National Insurance Company,* 186 U. S. 423, 22 S. Ct. 862, 46 L. ed. 1229, and the Supreme Court of West Virginia (substantially the same language), in *Murdock* v. *Insurance Company,* 33 W. Va. 407, 10 S. E. 777, and many other cases adjudicated by this Court, which cases the Circuit Court of Appeals refused to apply in the instant case.

2. Whether Section 7, of Article 4, of Chapter 33 of the Official Code of West Virginia (Michie's Code, Serial Section 3366) and Section 8, of Article 4, of Chapter 33 of the Official Code of West Virginia (Michie's Code, Serial Section 3367), is violated both in letter and spirit, if the policy in controversy is to be construed as the Circuit Court of Appeals has construed it in the instant case.

3. Whether a policy of fire insurance contracted, issued and delivered in West Virginia, insuring a building against damage or destruction by fire, and the named assured is not the fee simple owner of the land on which the building stands, or the sole and unconditional owner of the building, and in such circumstances, under the provisions of the West Virginia Statute, such policy is so written that the same may conform to the statute, bearing the stipulation in writing, required by the statute, defining the extent of the insurance, is to be so construed as to give such words, *defining the extent of the insurance,* the technical and previously determined legal meaning attributed to them by both the Supreme Court of the United States and the Supreme Court of West Virginia, or shall such stipulation be ignored and by mere *ipse dixit* held to have been intended to mean nothing more than the contract would have meant had not such words been used.

4. Whether equitable principles will be invoked for the proper distribution of funds payable as indemnity under the terms of a matured fire insurance policy, where the policy is issued, insuring real estate, i.e., a building, the title to which is held by a tenant in possession, with reversion to another person upon the termination of a particular use of the property by such tenant in possession, and the policy bears the words "for account of whom it may concern," and such words were manifestly used to define the extent of the insurance and describe the intended assured, and the property is totally and completely destroyed by fire and the tenant in possession ceases to use the property for the intended purpose and abandons the property and the remainderman or reversioner becomes reinvested of his whole estate before the indemnity is paid.

5. Whether the indemnity, payable under an insurance policy insuring a building against the hazard of fire and the building is totally destroyed, stands in the place of the building, when the possessory title to the building was in the named assured, then in possession, but whose title is dependent upon a particular use of the property, with reversion to another upon cessation of such use, and immediately upon the maturity of the policy, such tenant in possession ceases to use the premises for the intended purpose and abandons the same, and the whole estate therein thereupon reverted to the remainderman. Will equity, under such circumstances, reconvert the indemnity into realty, to protect the interests of the different owners and the different estates, where it is manifest from the language used and the circumstances attending the issuance of the policy, that indemnity for the whole title was contemplated by the contracting parties?

STATUTES INVOLVED.

The pertinent statutes involved are Sections 7 and 8, of Article 4, of Chapter 33 of the Official Code of West Virginia. They are reproduced in the Appendix to the Brief accompanying this petition.

STATEMENT OF THE CASE.

On the 22nd day of December, 1944, Allemannia Fire Insurance Company filed its bill of interpleader in the District Court of the United States for the Southern District of West Virginia (R. 3) and process issued thereon (R. 9), convening petitioner and The Board of Education of the County of Raleigh, West Virginia, as a test case (R. 28-38), to determine the conflicting claims of the petitioner and The Board of Education of the County of Raleigh, West Virginia, to the indemnity under certain fire insurance policies issued by Allemannia Fire Insurance Company and some forty-two other insurance companies, arising out of the total destruction of a school building by fire, which was covered and insured by said insurance companies. The conflicting claims to the proceeds of indemnity arise out of the following circumstances:

1. On the 26th day of April, 1924, The Board of Education of Slab Fork District in the County of Raleigh, predecessor of The Board of Education of the County of Raleigh, West Virginia, determined to establish a high school in that magisterial district of the county, and to accomplish said purpose submitted a bond election to the voters of that political subdivision, by which election The Board of Education of Slab Fork District in the County of Raleigh was authorized to issue $130,000.00 of its school bonds. Under the call for the election it was provided that the school building would be located at or near the Village of Winding Gulf. The officials of The Board met with the officials of Winding Gulf Colliery Company, predecessor

of Winding Gulf Collieries, and they then and there had a verbal agreement, after inspecting the premises and specifications of the contemplated building, that such building would be located upon lands of Winding Gulf Colliery Company, to be used solely for public free school purposes, and upon cessation of the use thereof, the building was to revert to and become the property of the Winding Gulf Colliery Company. This was a perfectly legal contract under the laws of West Virginia. *Board of Education* v. *Harvey*, 70 W. Va. 480, 74 S. E. 507.

2. This parol agreement was carried into a written agreement by a deed dated the 23rd day of August, 1924, (R. 18) in which deed the previous parol agreement was expressed in the following language:

> "It is further distinctly understood and agreed by and between the parties hereto as a part of the consideration for this conveyance, that the property hereby conveyed is for public free school purposes only and for no other purpose or purposes and that the same and no part thereof shall at any time be used for any other purpose or purposes whatsoever and that whenever the said property hereby conveyed shall cease to be used for public free school purposes, the same and every part hereof shall thereupon ipso facto revert to and become reinvested in, the said party of the first part, its successors or assigns, in fee simple, with like force and to the same effect as if this conveyance had never been made."

3. By legislative enactment, (R. 133) respondent, The Board of Education of the County of Raleigh, West Virginia, succeeded to all the rights, properties and interests of The Board of Education of Slab Fork District in the County of Raleigh. Winding Gulf Collieries, by deed dated

the 15th day of August, 1929, succeeded to the rights of Winding Gulf Colliery Company. (R. 124.)

4. The Board of Education of Slab Fork District entered into the possession of the property conveyed by the deed aforesaid and built and constructed thereon a large and commodious high school building, and it, and its successor, occupied and used the premises for such public free school purposes for about twenty years.

5. On the first day of December, 1943, The Board of Education of the County of Raleigh, West Virginia, purchased broad, comprehensive, blanket insurance policies, all in substantially the same form, which were issued by forty-three insurance companies, for various principal amounts, the total amount in the instant policy was $142,000.00. (R. 24.) The coverage was, "on all buildings and structures of every description, * * * occupied for educational purposes and purposes necessary or incidental thereto, while located on premises owned, occupied, leased or used by the assured in Raleigh County, West Virginia." This policy was written on the standard form of fire insurance policy prescribed by the Statute of West Virginia (see photostatic policy with the transcript), but with provisions, riders and stipulations, giving the description of the property covered as above stated, and naming "The Board of Education of the County of Raleigh and legal representatives" as the named assured. In as much as the named assured was not the owner in fee of the lands on which many of the buildings stood, of which the instant case is one, it was necessary, under the West Virginia Statute, to insert special provisions to make the policy conform to the West Virginia Statute, otherwise the policy would be void. To accomplish this purpose and define "*the extent and application of the insurance under the*

policy," as required by the statute under such circumstances, and to further describe the estate and interests intended to be insured, and following the first paragraph naming "The Board of Education of the County of Raleigh and legal representatives" as the named assured, a rider or insertion was made in this language:

"ASSURED

THE BOARD OF EDUCATION OF THE COUNTY OF RALEIGH

As is now or may hereafter be constituted
For account of whom it may concern

Loss, if any, under this policy shall be adjusted with and held payable to the Board of Education of the County of Raleigh."

6. On the 5th day of January, 1944, the school building was totally destroyed by fire and The Board of Education immediately ceased to use the premises for public free school purposes, and abandoned the same and the whole title thereupon reverted to petitioner, as contemplated by the intent, spirit and meaning of the deed above referred to. The indemnity payable under the insurance policies has been ascertained and adjusted. The amount payable by the insurance companies on account of the total destruction of the school building, has been ascertained and fixed at $67,201.02. The amount for which Allemannia Fire Insurance Company is liable is $4,771.27. The Allemannia Fire Insurance Company has deposited the money into the registry of the District Court of the United States for the Southern District of West Virginia, and filed its bill of interpleader and enjoined the claimants from prosecuting their respective claims to the insurance indemnity.

The District Court awarded the indemnity to petitioner. The Circuit Court of Appeals reversed the District Court and awarded the indemnity to The Board of Education of the County of Raleigh.

SPECIFICATIONS OF ERRORS TO BE URGED.

The Circuit Court of Appeals erred:

1. In reversing the decree of the District Court of the United States for the Southern District of West Virginia.

(a) In refusing to give to the language, "for account of whom it may concern," as used in this policy, their previously determined legal significance and meaning, as established by the Supreme Court of the United States. They are technical words with universal recognized legal meaning, and apply not only to all persons, but to every specie of interest and property in the subject insured.

(b) In refusing to follow the Supreme Court of the United States and the Supreme Court of the States of West Virginia, as to the legal and technical meaning to the words, "for account of whom it may concern," when used in an insurance policy describing the insured and extent of the insurance and the District Court having rightfully followed that holding and construed the policy as indicated by the Supreme Court of the United States and the Supreme Court of the State of West Virginia, it was the duty of the Circuit Court of Appeals to follow and apply and enforce the language used as indicated by such previous decisions.

(c) In the holding, by the Circuit Court of Appeals, that the language used in the instant policy, under the circumstances, did not disclose an intention to cover the reversionary interest of this petitioner. Such holding is arbitrary and without facts on which to sustain or support it, especially in the light of the fact that the policy was drawn with such meticulous care by the adoption and use of such well recognized language, reinforced by the perfectly patent purpose of conforming to the statute to make the policy valid; and without which the policy would have been invalid;

(1) by inserting in the policy a broad, general, description of the property intended to be covered, i.e., "all buildings and structures of every description * * * occupied for educational purposes * * * while located on premises owned, occupied, leased or used by the assured in Raleigh County, West Virginia; and (2) by inserting therein a stipulation disclosing "the extent of the application of insurance under the policy, i.e., "for account of whom it may concern," and the use of other apt and appropriate words, for the purpose of complying with the sole ownership provision of the standard form of policy prescribed by the statute.

(d) In failure to take cognizance of the Statutes of West Virginia, (Section 7, of Article 4, of Chapter 33, and Section 8, of Article 4, of Chapter 33 of the Official Code of West Virginia, Michie's Code, Serial Sections 3366-3367—See Appendix) which are a part of the contract of insurance in the instant case, and the decision of the Circuit Court of Appeals reads the same out of the contract and fails to give the statutes their full force and effect according to their true intent, spirit and meaning.

2. The words, "for account of whom it may concern," used in defining the extent of the insurance and describing the intended assured, in the instant fire insurance policy, together with other clauses in the policy denying the insurer the defense arising out of limitation upon the interest or title of the named assured, insures the whole fee title in the property covered and converts the insurance policy into a covenant real running with the land, and under such policy principles similar to those controlling the insurance of property held in trust govern funds payable upon the maturity of such policy. Such policy will not be confined to the interest of the named assured, but covers the interest of all owners and may be adopted by any

person having an insurable interest in the subject of insurance, even after the loss.

3. Where a policy of insurance such as is involved in the instant case, exists, and the title is held by different persons of diverse interests, and the subject of insurance is real estate, and the policy matures by the occurrence of the event against which the policy was issued to indemnify, and the real estate is thus involuntarily converted into money, equity will reconvert the same into realty to protect the interests of the different owners and the different estates, and the money will stand in the place of the land and be held by each owner as of their respective estates in the real estate.

REASONS FOR GRANTING THE WRIT.

The Circuit Court of Appeals, in reversing the decision of the District Court, has failed to give to the insurance policy in controversy the well recognized and almost universal construction attributed to the language used, to express the intention of the contracting parties, and has construed the contract contrary to the applicable decisions of this Court, and has departed from the accepted and usual course of judicial proceedings.

The words and language involved in the policy of insurance, and more specifically pointed out in this petition, which were erroneously construed by the Circuit Court of Appeals, are of such ancient and universal origin that the same, from such usage in the insurance business, have become a rule of property, by which the rights of contracting parties have been fixed and established with previous certainty, by uniform line of decisions, especially since the decision of this Court in the case of *Hagan* v. *Scottish Union & National Insurance Company*, 186 U. S. 423, 46 L. ed. 1229.

The decision of the Circuit Court of Appeals, if permitted to remain unreversed, will render such rules governing the property rights of contracting parties uncertain and indefinite. Contracts of fire insurance are so essential to modern commerce and enterprise that the forms of such contracts, from the very nature of the undertaking, should be established with such certainty that the contracting parties would feel a sense of security in the validity of their contracts, without waiting the event of the catastrophe contemplated, to wager their rights on matters of construction of language of doubtful and uncertain meaning.

The Statutes of West Virginia, Section 7, of Article 4, of Chapter 33 of the Official Code of West Virginia, (Michie's Serial Section 3366) and Section 8, of Article 4, of Chapter 33 of the Official Code of West Virginia, (Michie's Serial Section 3367), appearing in the Appendix of the Brief accompanying this petition, became and were a part of the insurance policy in controversy, and the decision of the Circuit Court of Appeals ignores and fails to give these statutes the full force and effect to which the same are entitled.

PRAYER.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Court directed to the United States Circuit Court of Appeals for the Fourth Circuit, sitting at Richmond, Virginia, commanding that Court to certify to and send to this Court on a day certain to be therein named, a full and complete transcript of the record and all proceedings had in this case, numbered and entitled in its docket 5418, to the end that this case may be reviewed and determined by this Court; that the decree of the United States Circuit Court of Appeals rendered herein on the 12th day of December, 1945, and its final order denying rehearing, rendered on the 5th day of February, 1946, may be reversed by this Honorable Court, and that the judgment and decree of the District Court of the United States for the Southern District of West Virginia, entered on the 10th day of May, 1945, be reinstated and held to be firm and valid; and that your petitioner may have such other and further relief in the premises as may seem just and proper, and your petitioner will ever pray, etc.

WINDING GULF COLLIERIES,
Petitioner.

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